IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO.576 OF 1999

Bansidha Hanmant Kumbhar,
Age: 53 years, Occu :Service,
R/o.Hattur, Tal. South Solapur,
Dist.Solapur. .. Appellant
(Orig.Accused)

v/s.

The State of Maharashtra .. Respondent
(Orig.Complainant)

Mr.Shekhar Ingavle i/by Mr.A.H.Patil for the appellant.

Smt.V.R.Bhonsale, APP for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 18th January, 2005

ORAL JUDGMENT (Per R.M. Lodha, J.)

The appellant has been convicted of the offence punishable under section 302 of IPC and sentenced to suffer life imprisonment by the Sessions Judge, Solapur vide his judgment and order dated 21st August, 1999. Upset thereby, he has come up in appeal.

2. On 15th June, 1999, the appellant was charged by the Sessions Judge, Solapur thus-

> "That you, on the 7th day of September, 1997, at 8.30 P.M. or thereabout, near Wadar Galli Shindikhana situated in Shashtri Nagar, at Solapur; intentionally or knowingly causing the death of your wife Muktabai Bansidha Kumbhar by pouring kerosene and setting her on fire with the help of match stick and she died due to said burn injury on 10th day of September, 1997 and thereby committed murder

of your wife Muktabai Bansidha Kumbhar and thereby committed an offence punishable under Sec. 302 of the Indian Penal Code and within my cognizance;

And I hereby direct that you be tried by me on the said charge."

3. The appellant pleaded not guilty and prayed for trial.

4. The prosecution in support of its case examined P.S.I. B.G. Patil (PW1), Tatyappa Chougule (PW2), Shantabai (PW3), Dr.R.S. Ukarande (PW4), Dr.B.B.Gondale (PW5), B.K. Talbhandare (PW6), Kalpana Mudgal (PW7), P.S.I. D.A.Mulla (PW8) and Head Constable M.D. Shaikhdar (PW9).

5. The prosecution evidence was put to the accused-appellant and his statement under section 313 of the Cr.P.C. was recorded.

6. Upon consideration of the evidence on record, the learned Sessions Judge, Solapur held that the death of deceased Muktabai was homicidal. He also held that the accused-appellant on 7th September, 1997 at about 8.30 p.m. with an intention to cause death of Muktabai poured kerosene on her clothes and set her on fire. The accused was, thus, held guilty of the offence punishable under section 302 of the IPC and sentenced for life imprisonment.

7. Though the prosecution examined PW3 (sister of the deceased) as an eye witness, she was declared hostile as she did not support the prosecution case fully.

8. The principal evidence against the accused-appellant is in the form of two dying declarations (Ex.11 and Ex.23). The first dying declaration is recorded by PW1 who is P.S.I. At the relevant time he was attached to Civil Hospital Police Chowky at Solapur. On 7.9.97 at about 10.10 p.m. he was called by Dr.Ukarande (PW4) in O.P.D. and he was informed orally that the patient Muktabai was brought to the Civil Hospital and she informed that her husband poured kerosene on her person and set her on fire. He asked his assistant to forward the information to Sadar Bazar Police Station P.S.O. and sent for Executive Magistrate. PW1 then visited the patient in casualty and made enquiry with Dr.Ukrande (PW4) as to whether she was in a condition to give her statement. Dr.Ukarande told him that the patient Muktabai was conscious and was in a condition to give statement. PW1 then recorded the statement of Muktabai. The said statement is at Exhibit 11 on record. Muktabai stated that today (07.09.1997) at 7.00 p.m. the accused came to the house. At that time she asked for money from him as he has received the salary. Upon which quarrel ensued between two. Then the accused angrily by saying her that she should die as she demands money continuously, he poured the kerosene kept in a steel vessel on her person and put her on fire by match stick and then ran away from the place. On account of the accused setting her on fire, her saree got fire due to which her face, both hands, chest and stomach and back and

both thigh got burnt.

9. After the aforesaid statement of the injured Muktabai was recorded by PW1, the Executive Magistrate Talbhandare (PW6) reached the Casualty Ward of Civil Hospital. PW6 deposed before the court that on reaching the Casualty Ward of Civil Hospital, he approached the doctor and made enquiry whether the patient was in condition to give statement. The doctor examined the patient and made endorsement that the patient was in condition to give her statement. PW6 then recorded the statement of Muktabai in question and answer form. The said statement is Exhibit 23 on record. PW6 then read over the statement of Muktabai who admitted the correctness of her statement. PW6 obtained endorsement of the doctor at the bottom of that statement and also obtained thumb impression of Muktabai. PW6 then put his signature on the said statement.

10. From both the statements, Exhibit 11 and Exhibit 23, recorded by PW1 and PW6 respectively, which are duly proved, it is clear that Muktabai told them that on the date of incident when the accused-appellant visited her, she made demand of money from the accused and on that count, there was quarrel between her and the accused. The accused poured kerosene on her; set her on fire and ran away from the house. That the deceased Muktabai sustained 73% of the burn injury is established by the postmortem report and the testimony of

Dr.Gondale (PW5). She was oriented and in a condition to give her statement is established by the deposition of Dr. Ukarande (PW4). He deposed before the court that before recording the statement of Muktabai, he had examined her and confirmed that her blood pressure was normal and mental condition was also normal. The statement Exhibit 11 was recorded by PW1 in his presence and he made the endorsement that the patient was normal throughout.

11. We carefully scanned the deposition of PW1, PW4 and PW6 and have no doubt that the dying declarations (Exhibit 11 and Exhibit 23) were made by the deceased Muktabai to PW1 and PW6 respectively and at that time she was in physical and mental condition to give her statement. There is nothing to discredit the two dying declarations. PW1 and PW6 who recorded the two dying declarations (Ex.11 and Ex.23) had no ill-feeling against the accused. The two dying declarations (Exhibit 11 and Exhibit 23) were recorded one after the other and we do not find any inconsistency in the two dying declarations. As a matter of fact, nothing has been elicited in the cross-examination of PW1, PW4 and PW6 that the deceased Muktabai was not in physical and mental condition to give any statement or that the said dying declarations were not recorded at the time and the place they are said to be recorded. The learned Sessions Judge relied upon the two dying declarations for holding that the accused-appellant committed the murder of

Muktabai. We find it safe to rely upon these two dying declarations which in our considered view are free from doubt and do not suffer from any infirmity. That the deceased Muktabai was the concubine of the accused and out of that relationship two children were born is not in dispute. It is established on record that on the date of the incident viz. 7.9.98 in the evening the accused visited the house of Muktabai and at that time Muktabai asked for money from the accused. The quarrel ensued between the two and in that quarrel, the accused picked up the steel vessel containing kerosene; poured the kerosene on her and then set her on fire. As a result of which, she sustained 73% burn injuries and died after three days. These facts are fully established from the prosecution evidence. The proved facts establish the culpability of the accused in having committed murder of Muktabai.

12. We, therefore, find no ground to interfere with the judgment of the learned Sessions Judge, convicting the accused of the offence punishable under section 302 IPC.

13. Resultantly, the appeal fails and is dismissed.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)